IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.1123 OF 2004

Mr.Gurling Kallappa Ambole and Anr... Appellants
Versus
Mr.Ramchandra Khando Kulkarni ..... Respondent

Mr.M.S.Rajeshirke h/f M.S.Karnik for appellants
Mr.Anilkumar Patil for respondent

CORAM : P.V.KAKADE, J.

DATE : 26TH SEPTEMBER, 2005.

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by District Judge, Sangli dated 23.7.2004 dismissing the appeal and confirming the judgment and order passed by Civil Judge,Junior Division, Sangli dated 12.12.1996 issuing perpetual injunction against the defendants.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The plaintiff filed the suit against the defendants for perpetual injunction in respect of suit property bearing Gat No.260/1-A situated at village

Malwadi in District Sangli. The plaintiff came with the case that he is owner of the suit property and due to service he was residing outside and his brother was managing the property. The suit land is Bagayat land and plaintiff used to take sugar-cane crop from the suit land. There is one water chamber in the said land towards south east corner. Towards western side of chamber there is Beghar Vasahat and towards south there is Gaothan of village Malwadi. One Beghar Vasahat is situated towards western side of suit land and towards western side of said Vasahat defendant no.2 is having his land. The defendant no.2 having good relations with the people of Beghar Vasahat and with their support defendant no.1 Grampachayat and defendant no.2 have tried to create road in the suit land on east to south inspite of objections and hence the suit came to be filed. The defendants have contested the suit, inter alia, denying the allegations made by the plaintiff. The defendant no.2 came with the specific case that he has right of way over the suit property for last 25 years prior to the suit and therefore, that right of way was easmentary right and therefore, plaintiff’s suit was sought to be dismissed.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had proved his possession over the suit property on the date of the suit. Further it was held that the plaintiff had proved that the defendants were obstructing the suit property and the defendants were held to have failed to prove the existence of 30 x 15 ft. way in the suit land since long time and therefore, it was held that there is no right of easement vested in the defendants and as such suit came to be decreed. The appeal was carried to the District Court. The learned District Judge after hearing both sides concurred with the findings recorded by the trial court and dismissed the appeal. Hence the present Appeal.

4. At the outset there is absolutely no substantial question of law involved in this appeal. The learned counsel for the appellant sought to submit that the plaintiff had admitted that the defendants had right of way over the suit land. However, record shows that there was complaint with Tahsildar made by the plaintiff and in that complaint enquiry was made and the plaintiff alleged that recently some people had started using his land to go to Beghar Vasahat. However, this aspect does

not help to establish the alleged easmentary right of way through the suit property. The Court Commissioner was appointed and Court Commissioner's report was also considered by both the courts below. However, it was submitted by the learned counsel for the appellant that mere reference was made to the Commissioner's report by the appellate court and it has not been discussed. However, it is to be noted that evidence on record is sufficient to show that the suit land was owned and possessed by the plaintiff and the defendants have failed to prove their specific contention that the suit way exists through the land of the plaintiff and as such both the courts below have recorded concurrent findings to the effect that the plaintiff had proved his case for perpetual injunction against the defendants. In view of this position I am satisfied that both the courts below have appreciated the evidence on record in proper perspective and therefore, it would brook no interference.

5. In the result the appal stands dismissed. Consequently Civil Application No.1433 of 2004 also stands dismissed.